

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

FABIAN SANTIAGO,)
vs.)
Plaintiff,)
vs.) CIVIL NO. 05-512-MJR
SGT. CHILDERS, *et al.*,)
Defendants.)

MEMORANDUM AND ORDER

REAGAN, District Judge:

This action is before the Court to rule on Plaintiff's "motion of reconsideration" (Doc. 14). Technically, such a motion does not exist under the Federal Rules of Civil Procedure. The Seventh Circuit has held, however, that a motion challenging the merits of a district court order will automatically be considered as having been filed pursuant to Rule 59(e) or Rule 60(b) of the Federal Rules of Civil Procedure. *See, e.g., Mares v. Busby*, 34 F.3d 533, 535 (7th Cir. 1994); *United States v. Deutsch*, 981 F.2d 299, 300 (7th Cir. 1992). As noted in *Deutsch*, "in cases where it is unclear whether a motion challenging a judgment on the merits is made under Rule 59(e) or Rule 60(b)," the date of service will determine how the motion will be treated. Thus, "'if the motion is served within ten days of the rendition of judgment, the motion falls under Rule 59(e); if it is served after that time, it falls under Rule 60(b).'" *Id.* (citations omitted).

The order in question (Doc. 12) was entered in this action on September 29, 2006, and the instant motion was filed on October 16. Giving Plaintiff the benefit of the mailbox rule, the Court finds that this motion was filed within the 10-day period. *See* FED.R.CIV.P. 59(e). Therefore, under *Deutsch*, the Court will construe the motion as a motion to alter or amend judgment, filed pursuant

to Rule 59(e), which may only be granted if a movant shows there was mistake of law or fact or presents newly discovered evidence that could not have been discovered previously. *Matter of Prince*, 85 F.3d 314 (7th Cir. 1996), *reh'g and suggestion for reh'g en banc denied, cert. denied* 117 S.Ct. 608; *Deutsch v. Burlington Northern R. Co.*, 983 F.2d 741 (7th Cir. 1993).

Upon review of the record, the Court remains persuaded that its ruling dismissing certain claims and defendants pursuant to 28 U.S.C. § 1915 was correct. Therefore, the instant motion is **DENIED**.

IT IS SO ORDERED.

DATED this 20th day of September, 2007.

s/ Michael J. Reagan
MICHAEL J. REAGAN
United States District Judge